

 <p>Agreement on the Conservation of Albatrosses and Petrels</p>	<p style="text-align: center;">Eighth Meeting of the Advisory Committee <i>Punta del Este, Uruguay, 15 -19 September 2014</i></p> <p style="text-align: center;">Report of Intersessional Committee established by Resolution 4.8</p> <p style="text-align: center;"><i>Intersessional Committee</i></p>
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SUMMARY

The intersessional committee established by Resolution 4.8 continues to explore options that would enable relevant APEC member economies to participate, as a first step, as observers in sessions of the Meeting of the Parties and in meetings of its subsidiary bodies. The committee has worked expeditiously on the task it has been set. It is pleased to indicate that work is now focused on only two options: Option A—amending Rule 4(1) of the rules of procedure and Option B—status quo. The committee will continue work on these options with a view to considering conducting an intersessional voting process ahead of the Fifth Session of the Meeting of the Parties in 2015.

RECOMMENDATIONS

1. The Parties are invited to consider the work of the intersessional committee on options for observership by relevant APEC member economies.
2. The Parties are invited to note that the committee will continue work on the options with a view to considering conducting an intersessional voting process ahead of the Fifth Session of the Meeting of the Parties in 2015.

1. PROGRESS OF WORK OF INTERSESSIONAL COMMITTEE

The intersessional committee established by Resolution 4.8 commenced its work in December 2012. The committee appointed Jonathon Barrington as its Chair. Australia, France, New Zealand, Peru and the United Kingdom agreed to be participants on this committee. Argentina, Brazil, South Africa and Spain agreed to be observers to this committee. Canada and the United States observed an in-the margins meeting of the committee at the Seventh Session of the Advisory Committee in May 2013, with the United States continuing as an observer thereafter. Dr Marco Favero, Chair of the Advisory Committee was appointed to the intersessional committee in an ex officio capacity.

The committee has established a number of procedural guidelines concerning its work. These are designed to act as a guide for participants when considering the effect of the Agreement and of the rules of procedure for the Meeting of the Parties. The guidelines indicate that the committee will proceed on the basis of the views expressed by the participants during its deliberations.

The committee agreed, as a first step, to focus its efforts on options for participation as observers by any member economy of the Asia Pacific Economic Co-operation Forum whose vessels fish within the range of albatrosses and petrels (**relevant APEC member economies**) in sessions of the Meeting of the Parties and its subsidiary bodies. Five options were considered: Option A—amending Rule 4(1) of the rules of procedure; Option B—status quo; Option C—adopting provisions pursuant to Article VIII.15 to enable participation by any APEC member economy as observers; Option D—amending the Agreement; and Option E—entering into Memorandum of Understanding with APEC. Option A, Option B and Option C have been considered in detail. The committee expressed a willingness to explore Option A and identified alternatives for implementing this option, including the proposal raised by Australia at the Fourth Session of the Meeting of the Parties (MoP4 Doc 06 refers). The committee also expressed a willingness to explore Option B. The committee considers Option C as likely to raise differences of view among the Parties concerning the interpretation of Article VIII.15 of the Agreement. Accordingly, Option C has been discounted. Option D and Option E have been considered by the committee and have also been discounted.

2. OPTION A— AMENDING RULE 4(1) OF THE RULES OF PROCEDURE

Option A envisages amending Rule 4(1) of the rules of procedure to enable relevant APEC member economies to participate, as a first step, as observers in sessions of the Meeting of the Parties and in meetings of its subsidiary bodies.

The committee has approached amending Rule 4(1) with the following outcomes in mind: providing a mechanism to enable relevant APEC member economies to participate as observers in sessions of the Meeting of the Parties and in meetings of its subsidiary bodies; addressing ambiguity in Rule 4(1) concerning the phrase ‘any member economy of the Asia Pacific Economic Co-operation Forum in respect of Article VIII, paragraph 15 of the Agreement’; including a reasoned objections mechanism; and considering the proposal of Australia concerning amending the rules of procedure raised at the fourth session of the Meeting of the Parties: Lima, 23-27 April 2012 (MoP4 Doc 06 (Australia)).

The committee’s approach to Option A would amend Rule 4(1) to remove the reference to ‘any member economy of the Asia Pacific Economic Co-operation Forum in respect of Article VIII, paragraph 15 of the Agreement’. Participation by relevant APEC member economies as observers in sessions of the Meeting of the Parties would be addressed separately by including new rules of procedure on this subject. This proposed approach differs to that proposed in MoP4 Doc 06 (Australia) so as to allow for an objections mechanism.

There has been discussion within the committee about how to amend the rules of procedure to achieve the identified outcomes with four potential options identified:

1. Allowing observership except if one-third of the Parties object—any objection is to include written reasons for the objection.
2. Allowing observership except if one-third of the Parties object—no requirement to provide written reasons for the objection.
3. Allowing observership except if any Party objects—any objection is to include written reasons for the objection.
4. Allowing observership except if any Party objects—no requirement to provide written reasons for the objection.

The committee presently have expressed provisional views about Option A. Five participants express a willingness to support the first option—considering it appropriate that relevant APEC member economies be afforded at least the same observership status as relevant international bodies (cf. Rule 4(3) of the rules of procedure for the Meeting of the Parties). These five participants do not express a willingness to support either of the veto options—as described in the third and fourth options. Two participants have indicated a willingness to support the third option, but have not indicated whether they would be willing to support other options. One participant has expressed its willingness to consider the second or fourth options. Another participant has expressed for a willingness to support the fourth option—in the alternative to the participant’s willingness to support Option B (Option B is discussed below). One participant suggests that multiple proposals should be put to the Parties. One participant has not expressed a view about the four options.

The committee continues to consider whether to amend Rule 4(1) through a minor amendment to its wording, as proposed by Australia in MoP4 Doc 06 (Australia).

3. OPTION B—STATUS QUO

Option B considers the existing rules of procedure are sufficient to enable relevant APEC member economies to participate as observers in sessions of the Meeting of the Parties.

Option B proceeds on the basis that the ability of relevant APEC member economies to participate as observers is sufficiently clear despite any potential ambiguity. It is also possible for this option to proceed on the basis of differing interpretations of Article VIII.15.

The committee presently have expressed provisional views about Option A. A participant expresses a willingness to support Option B (see also Option A above).

4. NEXT STEPS

4.1. Settling on a preferred option

The committee will continue to discuss the differing approaches under Option A and Option B with a view to forming a consensus about which option to recommend to the Parties. If a consensus cannot be reached the committee will put the ‘best’ option forward. This will be the option that attracts the greatest express support within the committee.

4.1. Consulting informally with APEC

Resolution 4.8 requires the committee to consult informally with APEC. The committee has not decided on either the form or the content of such consultations. One way this consultation may be achieved is by tasking the Executive Secretary to write to his counterpart, Dr Allan Ballard, Executive Director to APEC to inform member economies that ACAP is looking to facilitate relevant APEC member economy observership at ACAP forums.

Any consultations with APEC will, necessarily, precede putting the 'best option' to the Parties.

4.1. Intersessional voting

The committee will continue work on Option A and Option B with a view to considering conducting an intersessional voting process ahead of the Fifth Session of the Meeting of the Parties in 2015.

The Meeting of the Parties has adopted its rules of procedure under Article VIII.11(a) and can amend these rules under Article VIII.13(a). Intersessional voting by the Meeting of the Parties is governed by Rule 24 of the rules of procedure for the Meeting of the Parties. Nothing in the Agreement prevents intersessional voting to amend the rules of procedure for the Meeting of the Parties.

Rule 24(2) of the rules of procedure for the Meeting of the Parties provides that any Party may submit a proposal for consideration intersessionally to the Executive Secretary where, in the Party's view, there are exceptional circumstances. The Executive Secretary would be required by Rule 24(2) to circulate the proposal to the Parties within seven days, along with any additional information that may assist the Parties. Resolving the ambiguity concerning observership by relevant APEC member economies potentially represents an exceptional circumstance requiring intersessional voting. As Resolution 4.8 indicates the effective mitigation of threats posed to albatrosses and petrels throughout their range would be enhanced by facilitating timely cooperation with relevant APEC member economies, particularly those whose distant water fishing fleets have a high incidence of bycatch of albatross and petrel species.

Under Rule 24(3), the Parties would have 45 days to consider and respond to the proposal once it is circulated. Within this period each Party is to indicate to the Executive Secretary whether they support the proposal, reject it, abstain on it, require additional time to consider it, or consider that it is not necessary for the vote to be taken intersessionally.

Under Rule 24(4), if more than two-thirds of Parties consider it is not necessary for an intersessional vote to be taken, then the proposal would be included on the agenda for the next session of the Meeting of the Parties.

Notwithstanding Rule 20, under Rule 24(5), any intersessional decision is to be taken by consensus. This would require that all responses received by the Executive Secretary within the 45 day time frame must either support the proposal or abstain from it.¹ If consensus was not obtained (that is, if any response received either rejects the proposal, notes that additional time is required or notes that it is not necessary to vote intersessionally), then the proposal would be included on the agenda for the next session of the Meeting of the Parties.

¹ There is an error in paragraph 5 of Rule 24. The reference to the 'time frame' in this paragraph should refer to paragraph 3 of Rule 24.

The committee notes that the Fifth Session of the Meeting of the Parties will be held in 2015. The committee recognises that the timeframe for an intersessional vote would need to be completed before any potential deadline for an application by an APEC member economy to participate as an observer. The committee concludes that, subject to the above, it would be appropriate for intersessional voting to occur expeditiously, if Parties are to ensure observership by relevant APEC member economies the Fifth Session of the Meeting of the Parties.

If this pathway is chosen, the committee notes that Australia will agree to submit a proposal to the Secretariat at the appropriate time to instigate the intersessional voting process.